

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-11114 of 2019 (O&M)
Date of Decision: November 21, 2019.**

Suresh Kumar

.....PETITIONER

VERSUS

State of Punjab and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Avtar Singh Syan, Advocate
for the petitioners.

Mr. Rakeshinder Singh Sidhu, A.A.G, Punjab.

SURINDER GUPTA, J.(Oral)

Heard.

An FIR No. 101 dated 30.07.2014 was registered for the offence punishable under Section 365 of Indian Penal Code (for short IPC) at Police Station Nangal (copy of FIR has not been produced on file but learned counsel for the petitioner submits that the FIR relates to kidnapping of Krishan Garg son of Suresh Kumar-petitioner). The police after investigation presented untraced report which was not accepted by the Court and the learned Magistrate vide order dated 22.11.2016 directed the constitution of Special Investigation Team for further investigation in the case and to carry out necessary scientific tests of complainant-Suresh Kumar, Jagdev Singh Kuku and Surinder Pal Singh. Learned counsel for the petitioner submits that in the meanwhile, the petitioner had filed a petition bearing CRM No. M-28304 of 2014, which was decided by this

Court on 01.12.2015. Thereafter, the petitioner filed another Criminal Miscellaneous No. M-267 of 2016 which was dismissed vide order dated 08.01.2016, which finds mention in the order of the Hon'ble Apex Court dated 26.02.2016 and reads as follows:

“There cannot be second view that free and fair investigation should be conducted with regard to allegations of kidnapping of Krishan Garg, grand-son of the petitioner. In the earlier petition filed on the similar grounds, this Court had passed the following order:-

“Learned counsel for the State, on instructions from ASI Sardara Singh of Police Station, Nangal, District Roopnagar, submits that within four months from the passing of the present order, the report under Section 173 Cr.P.C., would be presented before learned Area Judicial Magistrate.

In view of above, learned proxy counsel for the petitioner does not press this petition at this stage.

Ordered accordingly.”

The argument of learned counsel for the petitioner that proxy counsel had appeared on 01.12.2015 before this Court was not aware of the facts of the case, is not tenable.

While disposing of the earlier petition, this Court had perused the material and found that the learned counsel for the State, after taking proper instructions from ASI Sardara Singh, Police Station, Nangal, District Roopnagar, had suffered the statement that the report under Section 173 Cr.P.C. would be presented within four months from the date passing of the said order. Repeated petitions seeking similar relief cannot be appreciated.”

The petitioner challenged that order before the Hon'ble Apex Court and the order passed by this Court was set aside with the observations that SIT has been constituted in this case and report of SIT has not come, as

such, the High Court should not have directed ASI Sardara Singh, Police Station Nangal to file the final report under Section 173 Cr.P.C. The matter was remitted to this Court for proceedings with that case in accordance with law.

The petition bearing CRM No. M-267-2016 was again taken up on 12.10.2018 and was disposed of with observations in para No. 4 and 5 of order, which are reproduced as follows:

4. During pendency of the present petition, State of Punjab constituted SIT in view of order dated 22.11.2016. Further SIT submitted its report on 19.02.2018. Till date the petitioner has not made necessary amendment to the petition if he is aggrieved by the SIT report dated 19.02.2018. In the absence of amendment to the petition to the extent of challenging SIT report, in the absence of amendment to petition, SIT report cannot be gone into. At this stage, it was submitted objections to SIT report is filed, merely filing objections to SIT report dated 19.02.2018 one cannot draw inference that there is challenge to the SIT report dated 19.02.2018. Accordingly, petition stands disposed of reserving liberty to challenge SIT report dated 19.02.2018, in accordance with law.

5. Order of Supreme Court cited above is after rejecting the petitioner's plea made only an observation to apprise this Court relating to handing over the matter to CBI. Having regard to the petitioner's prayer read with SIT report, as long as SIT report is not challenged by the petitioner and if he is not satisfied and not challenging the same even to this day question of considering the matter be referred to CBI or not, do not arise.

Thereafter, the petitioner filed this petition seeking relief that the status report filed in the earlier petition bearing CRM No. M-267 of

Vide order dated 12.10.2018 (Annexure P-9), it was observed that till the SIT report is not challenged, request of the petitioner that matter be referred to CBI is not tenable. The challenge in this case is not to the report of SIT but to the Status report dated 19.02.2018 (Annexure P-7). The issue raised by learned counsel for the petitioner is that despite the order of the Court, the police has not got narco test of petitioner, Surinder Pal Singh and Jagdev Singh.

Learned State counsel on instructions from ASI Rakeshwinder Singh has argued that above three persons were taken to the Forensic Psychology Division, Central Forensic Science Laboratory, Central Bureau of Investigation, New Delhi, between 22.05.2017 and 23.05.2017 for polygraph examination. Test of Surinder Pal Singh was conducted but polygraph examination of Jagdev Singh was not carried out by the CFSL due to his medical condition as he was having kidney problem for which he was on dialysis for the last five years. He further submits that petitioner and Surinder Pal Singh were then taken to Directorate of Forensic Science, Gandhi Nagar, Gujrat for conducting Polygraph Test, Lie Detector Test, Brain Mapping and Narco Analysis Test on 24.10.2017 and requisite fee was deposited with DFSL, Gandhi Nagar, Gujrat. Directorate of Forensic Science conducted Brain Electrical Oscillation Signature Profiling on petitioner and Surinder Pal Singh and sent its report dated 01.12.2017 to the Director, Bureau of Investigation, Punjab about the Narco Analysis test with a note as follows:

Note: Taking into consideration the BEOS report of Suresh Kumar and Surinder Pal Singh, it is suggested that there is no further requirement to conduct their Narco Analysis

examination. However, it in case new lead/evidence are gathered during the course of your further investigation the it is recommended to conduct their Narco Analysis examination with newly gathered facts.

He submits that thereafter the matter is still under investigation and as and when new evidence comes before the SIT, the compliance of note given by Forensic Science Laboratory, Gandhi Nagar will be made.

It is unfortunate that the petitioner is filing repeated petitions for further investigation of the case and seeking investigation to be entrusted to Central Bureau of Investigation with the plea that the local police and SIT are not conducting the investigation in a proper manner.

Learned counsel for the petitioner at this point has submitted that face book account of the child has been given to the Investigating officer which he has not looked into so far.

Learned State counsel submits that face book account of the child has been sent to the Cyber Cell and the report is still awaited.

Keeping in view the facts stated in the reply by the State, the attempt made by the SIT to get the scientific test of Surinder Pal Singh and petitioner along with Jagdev Singh conducted at Delhi and Gandhi Nagar, Gujrat, sending of face book account of missing child to Cyber Cell reflect that all the steps are being taken by SIT to investigate the case from all the angles. Entrusting this case to CBI at this stage will not help in investigation of the case in a better manner than the investigation is being conducted at present. It appears that the petitioner is not satisfied as the investigation has not yielded any results but these are the hazards of investigation which one has to bear. It will appropriate for SIT to associate the petitioner in the

investigation and keep him informed about the progress being made by them before submitting the final report in the Court.

With these observations but without expressing any opinion on merits, I am of the opinion that no further order is required to be passed in this petition for referring the matter for investigation to Central Bureau Investigation or to reject the status report dated 09.0.2.2018.

This petition has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

November 21, 2019

Jyoti-II

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No